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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 NATIONWIDE RECOVERY SYSTEMS,
15 LTD. and DOES 1 through 100, inclusive,

16 Defendants.
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) Case No. 07 CV 2132 DMS (AJB)

) Judge: Hon. Dana M. Sabraw

) Mag. Judge: Hon. Anthony J. Battaglia

) **PLAINTIFF JAMES M. KINDER'S**
) **STATEMENT OF PARTIAL**
) **OPPOSITION TO DEFENDANT'S**
) **MOTION FOR CONSOLIDATION**
) **OF ACTIONS**

) Date: February 8, 2008

) Time: 1:30 p.m.

) Courtroom: 10
19

20 **I. INTRODUCTION**

21 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE
22 TAKE NOTICE THAT Plaintiff JAMES M. KINDER hereby opposes, in part, Defendant
23 NATIONWIDE RECOVERY SYSTEMS, LTD.'s Motion for Consolidation of Actions, for the
24 reasons set forth below.

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II. PROCEDURAL HISTORY AND FACTS

With the exception of the low number case, each of the cases sought to be consolidated by Defendant is in the very early stages of litigation. Some of the cases have not yet proceeded to an Early Neutral Evaluation (ENE) [*Kinder v. Cavalry Investments, LLC*, Case No. 07 CV 2274 IEG (WMc); *Kinder v. Harrah's Entertainment, Inc.*, Case No. 07 CV 2226 DMS (AJB); *Kinder v. Enhanced Recovery Corporation*, Case No. 07 CV 2152 DMS (AJB); and this case].

Most of the cases that have proceeded to an ENE have been scheduled for telephonic case management conferences in light of this pending motion and the law and motion work pending in the cases sought to be consolidated therein. *Kinder v. Astra Business Services, Inc.*, Case No. 07 CV 2091 DMS (AJB), is scheduled for a telephonic Case Management Conference on February 29, 2008 at 10:30 a.m. *Kinder v. Asset Acceptance, LLC*, Case No. 07 CV 2084 DMS (AJB), is scheduled for a telephonic Case Management Conference on April 10, 2008 at 9:00 a.m. *Kinder v. Discover Card Services, Inc.*, Case No. 07 CV 2138 DMS (AJB), is set for a telephonic Case Management Conference on March 28, 2008 at 9:00 a.m.

Kinder v. Sprint PCS Assets, L.L.C. et al., Case No. 07 CV 2049 W (JMA), resolved on January 15, 2008 at an ENE. See Document 12 in that case, filed January 16, 2008.

Currently, there is pending a **Motion to Remand** in *Kinder v. Cavalry Investments, LLC*, Case No. 07 CV 2274 IEG (WMc), set for March 17, 2008.

The low number case herein, *Kinder v. Bankfirst*, Case No. 07 CV 0877 DMS (AJB), is much further into litigation than all of the other cases. A Rule 26 (f) conference has already been held, written discovery has been propounded by both parties and dates have been set to and including trial. The discovery cutoff in that case is March 3, 2008. The deadline for filing

1 motions is May 2, 2008. The pretrial conference is scheduled for September 5, 2008 at 10:30
2 a.m. and trial is scheduled for October 20, 2008 at 9:00 a.m.

3 III. ARGUMENT

4 Plaintiff agrees with Defendant that, with the exception of *Kinder v. Bankfirst*, these cases
5 should be consolidated to “streamline the litigation process, preserve judicial resources and
6 unnecessary duplication of effort by the parties, and promote consistent adjudication of the
7 claims and defenses.”

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9 However, Plaintiff will be greatly prejudiced with regard to *Kinder v. Bankfirst* if that
10 case is consolidated with the other matters. The defendant in that case has a deadline of February
11 6, 2008 within which to respond to discovery propounded by Plaintiff on December 28, 2007 (a
12 one week extension of time was granted by Plaintiff’s counsel). Given that trial in that case is
13 looming, as are discovery and law and motion cutoffs, consolidating it with the other matters
14 could effectively reopen the case for new discovery and law and motion work which would not
15 have been propounded or filed by *Bankfirst* due to the approaching cutoff dates. Moreover,
16 Plaintiff has a reasonable expectation of moving forward to trial in a timely manner in that case,
17 given that it was removed to this court on May 15, 2007. Including that case in any consolidation
18 order could result in it not moving to trial until some time in late 2009. Plaintiff and Defendant
19 in that case have expended considerable attorney time and resources into the litigation and it
20 should proceed forward as scheduled.
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23 Consolidating the cases with the exception of *Kinder v. Bankfirst* will not frustrate or
24 impede any of the laudable goals which would be achieved by consolidation. It is only logical
25 that the remaining eight (8) cases, which were removed at approximately the same time and are
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1 at similar, if not identical, stages of litigation, should be heard together. This would still cut the
2 number of cases down from 9 to 2 and, because of the low number rule, there is no danger of
3 inconsistent adjudications in that this Judge will hear all law and motion work in the
4 consolidated matters as well as in *Kinder v. Bankfirst* [Although the next lowest numbered case
5 after *Kinder v. Bankfirst* is *Kinder v. Sprint PCS Assets, L.L.C. et al.*, Plaintiff expects *Kinder v.*
6 *Sprint PCS Assets, L.L.C. et al.* to be dismissed via a joint motion for dismissal in the very near
7 future, which would make the next lowest numbered case *Kinder v. Asset Acceptance, LLC*.
8 That case is assigned to Judges Sabraw and Battaglia, as is this case and *Kinder v. Bankfirst*].
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10 **IV. CONCLUSION**

11 For all of the reasons stated above, Plaintiff respectfully requests that this Court deny
12 Defendant's Motion for Consolidation as to *Kinder v. Bankfirst*, Case No. 07 CV 0877 DMS
13 (AJB), only. Plaintiff does not oppose consolidation of the remaining eight (8) TCPA matters.
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15 DATED: January 25, 2008

16 By: /s/ Chad Austin
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18 Plaintiff, JAMES M. KINDER
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